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No. 336.

IN THE

Supreme Court of the United States

B. F. LEE ET AL., PETITIONERS,

VS.

OSCEOLA & LITTLE RIVER ROAD IMPROVEMENT DISTRICT No. 1, OF MISSISSIPPI COUNTY, ARKANSAS, RESPONDENT.

ON WRIT OF ERROR TO THE SUPREME COURT OF ARKANSAS.

RESPONDENT'S BRIEF.

J. T. COSTON,
Attorney.

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STATEMENT OF FACT.

This is an action by respondent, a road improvement district organized under the laws of Arkansas, to foreclose the lien of assessed benefits. The lands involved are known as "lake lands" or "sunk lands" in Eastern Arkansas. They were assessed in the original organization of the district as the property of the riparian owners. Since then it has developed that the title was not in the riparian owners, but it was in the Government. Of course, the assessment made while the title was in the Government was void. After the title passed from the Government to the petitioners, and after

the improvements were made, the lands were re-assessed, and the assessment so made was upheld by the Supreme Court of Arkansas.

This is really a test case. Other cases involving the same question and a large acreage of land in Eastern Arkansas will reach this court sooner or later, unless the right to make or not make such assessments is clearly settled in this case.

PROPOSITIONS OF LAW.

We will undertake to show:

1. That the construction placed upon the statute by the Supreme Court of Arkansas is binding on this court, and not subject to review.

2. That the assessments did not deprive petitioners of their property without due process of law, although the *improvement,* for which the assessments were levied, was made before petitioners acquired the land, and while the title thereto was in the United States Government.

Statute in Question.

The section of the statute in question reads as follows:

> "The board of commissioners may not oftener than once a year order a reassessment of the benefits, which shall be made, advertised, revised and confirmed as in the case of the original assessment and with like effect; but if the district shall have issued interest-bearing evidence of the debt, the total amount of the assessed benefits shall never be diminished."
>
> C. & M. Digest, Sec. 5430.
>
> Acts of Arkansas, 1915, p. 1417, sec. 18.

The Supreme Court of Arkansas held that the above section of the road law of Arkansas authorized the making of the assessments involved in this action.

> *Lee v. Osceola & Little River Road Imp. Dist. No.* 1, 162 Ark. p. 4.

Construction of Statute Binding.

As already stated, the Supreme Court of Arkansas held that the assessment in question was authorized and provided for by the statute, and that construction of the statute is binding upon this court.

> "The meaning of a state statute, declared by the highest court of a state, is conclusive upon this court."
>
> *Morley* v. *Lake Shore Railway Co.*, 146 U. S. 167.

To the same effect are the following cases:

Whitney v. *Fox*, 166 U. S. 647.
Nobles v. *Georgia*, 168 U. S. 405.
Lindely v. *Natural Carbonic Gas Co.*, 220 U. S. 73.

Re-Assessment a New Assessment.

Learned counsel contend that, to uphold the assessment in question, would deprive petitioners of their property without due process of law, because (1) they had no choice in the organization of the district, (2) they could not be heard to oppose its creation, nor protest against the inclusion of their lands within it and (3) for the further reason that the assessments were made under the provision of the statute which provides only for a *re-assessment*.

We have already seen that the construction placed upon the statute by the Supreme Court of Arkansas is not subject to review in this court, and all other questions raised by counsel have been settled by other courts including at least two decisions of this court.

An improvement was made on a certain street in the City of Seattle and at the time the work was done it was supposed to be paid for out of the city treasury.

> "When the improvement in question was ordered, by the charter of Seattle the planking was to be paid for out of the general taxes."

After the work was done, however, the legislature passed an act authorizing a special assessment upon the real property benefited to pay for the improvement. In disposing of the case, the Supreme Court of the United States, in an opinion by Mr. Justice Holmes, used the following language:

> "At the end the benefit was there, on the ground, at the city's expense. The principles of taxation are not those of contract. A special assessment may be levied upon an executed consideration, that is to say, for a public work already done. *Bellows* v. *Weeks*, 41 Vermont, 590, 599, 600; *Mills* v. *Charleton*, 29 Wisconsin, 400, 413; *Hall* v. *Street Commissioners*, 177 Massachusetts, 434, 439. If this were not so, it might be hard to justify re-assessments."
>
> *"Of course, it does not matter that this is called a re-assessment. A re-assessment may be a new assessment."*
>
> *Seattle* v. *Kelleher*, 195 U. S. 359.

The above case, we think, is conclusive of this.

In a still more recent case, where the assessment of benefits was levied to pay for an improvement made many years previous thereto, this court, in an opinion by Mr. Justice Day, used the following language:

"It is first contended that the complainant is deprived of its property without due process of law, because the special assessment levied upon its property is for special benefits long since accrued, and that the statute under consideration is retrospective in its operation, thereby disturbing rights which had accrued to and become fixed in the property holders long before the passage of the statute; that the state had no authority because of benefits thus long since conferred to make the assessment in question."

"So far as any federal constitutional requirement is concerned, the state might exercise its authority to assess because of this special benefit, although that assessment was deferred for some time after the work was done at the public expense * * * But we are unable to see how the constitutional rights of the complainant are violated, so long as there was as to it a benefit formerly conferred, and still existing, which the property had derived at the public expense."

Wagner v. *Baltimore*, 239 U. S. 216-217.

To the same effect are the following cases:

State v. *District Court*, 104 N. W. 555.
Slocum, et al. v. *Brookline*, 39 N. E. 352.

Thus it appears that when one acquires land, no matter whether he acquires it from an individual, from the state, or from the United States, he takes it burdened with the right of the sovereign, acting directly or through its sub-agents, to assess it for special benefits accruing thereto from any improvement made in the future, in the present or in the past.

Conclusion.

As already stated, this is really a test case. On it hinges the validity of assessments on thousands of acres of "lake lands" or "sunk lands" in Eastern Arkansas. Squatters took possession of these lands when they belonged to the Government. After the title passed from the Government to petitioners, the land was *re-assessed* under the Arkansas statute. In making the assessments the petitioners had their day in court, and lost. They are receiving benefits from improvements made at a heavy expense to other land-owners, and it would be a travesty on justice to allow them to escape the payment of a just proportion of the cost of the improvement.

Respectfully submitted,

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Attorney.